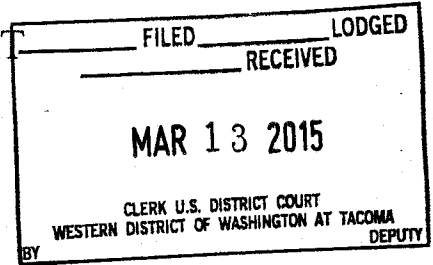


UNITED STATES DISTRICT COURT

for the
Western District of Washington



In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
Premises located at: 2521 Fremont Street,
Tacoma, WA 98406

Case No.

MJ15-5041

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, attached hereto and incorporated herein by reference.

located in the Western District of Washington, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, attached hereto and incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
26 U.S.C. § 7206(1)

False Tax Filings

Offense Description

The application is based on these facts:

See Affidavit of Special Agent Aaron Hopper, attached hereto and incorporated herein by reference.

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Aaron Hopper

Applicant's signature

Aaron Hopper, Special Agent, IRS

Printed name and title

Sworn to before me and signed in my presence.

Date: 3/13/15

J. Richard Creatura

Judge's signature

City and state: Tacoma, Washington

J. Richard Creatura, U.S. Magistrate Judge

Printed name and title

STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

I, Aaron Hopper, a Special Agent with the Criminal Division of the Internal Revenue Service, being first duly sworn, depose and state as follows:

1. I submit this affidavit in support of a warrant to search the residence of Troy X. Kelley located in Tacoma, Washington, for evidence, instrumentalities, and fruits of the offense of False Tax Filing, in violation of Title 26, United States Code, Section 7206(1), for the tax years 2011 and 2012. I have reason to believe that Kelley knowingly and willfully declared tens of thousands of dollars in false business expenses in 2011 and 2012 in connection with a scheme to fraudulently reduce his tax obligations.

2. From approximately 2002 through 2008, Kelley owned and operated a business that tracked, on behalf of escrow companies, the recording of reconveyance documents in residential real estate transactions. In 2008, law suits were filed in Washington State on behalf of escrow customers alleging, among other things, that escrow companies knowingly and fraudulently charged unnecessary reconveyance fees. The escrow companies, in turn, revealed that in some cases they had out-sourced the monitoring of reconveyances and turned over the administration of reconveyance fees to third-party service providers such as Kelley's business. One escrow company explicitly accused Kelley of failing to make good on promises to return to the escrow customers the unused portions of their fees.

3. In about June 2008, as the suits were lodged, Kelley ceased operating his reconveyance tracking business in Washington State. That same month, Kelley, through a series of transactions, consolidated more than \$3 million dollars in reconveyance fees

1 that he had maintained in various accounts and transferred the money into one account
2 held in the name of a newly-formed entity, but controlled by Kelley. Moreover, Kelley
3 did not declare the millions of dollars of fees he took as income to the IRS.

4 4. By 2011, the reconveyance-fee lawsuits that implicated Kelley had been all
5 dismissed or settled. As of June 2011, after paying a substantial settlement to one of his
6 escrow company clients, Kelley continued to control more than \$2 million of the
7 reconveyance fees he had originally amassed in 2008. However, Kelley still had not
8 declared any of the sums he held as income to the IRS. At this point, rather than declare
9 and pay tax on the entire amount, Kelley embarked on a scheme to fraudulently reduce
10 his tax burden. Beginning in about June 2011 and continuing through 2012, Kelley paid
11 himself \$245,000 per year from the pool of more than \$2 million through a wholly owned
12 S corporation, Blackstone International, Inc. (hereinafter, "Blackstone"). In the relevant
13 federal income tax filings for each of those years, Kelley declared that Blackstone was in
14 the business of providing "document tracking" services, and listed the \$245,000
15 payments as the only major source of income earned by Blackstone. Kelley then further
16 offset each year's income with tens of thousands of dollars of purported business
17 expenses.

18 5. Blackstone's tax filings for the tax years 2011 and 2012 (which were filed
19 with the IRS in 2012 and 2013, respectively) were knowingly and materially false. As
20 detailed below, the investigation to date indicates that Kelley did not conduct any
21 document-tracking business through Blackstone in 2011 and 2012 to generate the
22 \$245,000 in income, and, more importantly, the purported business expenses he claimed
23 to reduce his tax. The business address listed for Blackstone in each of the relevant tax
24 filings is the personal residence of Kelley. Each of Blackstone's tax returns is signed as
25 having been prepared by Kelley. For these reasons, and for reasons detailed below, I
26 believe there is probable cause to believe that evidence, fruits, and instrumentalities of
27 the offense of False Tax Filing for the tax years 2011 and 2012 may be found at Kelley's
28 residence.

II. EXPERIENCE OF AGENT.

6. I am a Special Agent with the Internal Revenue Service, Criminal Investigation (IRS-CI). I have been so employed since September, 2008. My official duties and responsibilities include the investigation of alleged criminal violations of the Internal Revenue Code and related financial offenses. I have conducted investigations of suspected tax fraud including the filing of false tax returns. I have also participated in the execution of search warrants obtained by myself and other special agents of the IRS-CI.

7. I received a Bachelor's of Science degree in Accounting from City University. I am a Certified Public Accountant, licensed in the State of Washington since 2005. I have successfully completed the Criminal Investigator Training Program and the Special Agent Investigative Techniques Program, both of which were held at the Federal Law Enforcement Training Center in Glynco, Georgia. My training included courses in law enforcement techniques, federal criminal statutes, conducting criminal investigations, and the execution of search warrants. I also received training in financial investigation techniques and legal principles, which emphasized the investigation of criminal offenses under Titles 26, 18, and 31 of the United States Code. Before my current position with IRS-CI, I was employed as a Revenue Agent for the IRS for approximately three years, primarily performing civil examinations of small businesses and self-employed individuals. As a Revenue Agent I received specialized training in personal, partnership, and corporate income tax, as specified in the Internal Revenue Code. Prior to working for the IRS, I was employed as a Revenue Auditor by the Washington State Department of Revenue, conducting examinations of businesses' combined excise tax returns.

8. The facts set forth in this Affidavit are based on information obtained by me and others during this investigation from a variety of sources, including, but not limited to: (a) witness interviews; (b) business records and other documents obtained from various entities; (c) federal tax return information; and (d) publicly available documents.

1 9. Because this Affidavit is submitted for the limited purpose of establishing
2 probable cause in support of the application for a search warrant, it does not set forth
3 each and every fact that I or others have learned during the course of this investigation. I
4 have set forth only the facts that I believe are necessary to the determination of probable
5 cause to believe that evidence, fruits and instrumentalities of violations of Title 26,
6 United States Code, Section 7206(1) (False Tax Filing) will be found within Kelley's
7 residence.

8 **III. LOCATION TO BE SEARCHED.**

9 10. I make this affidavit in support of an application for a warrant to search the
10 residence of Troy X. Kelley, located at 2521 Fremont Street, Tacoma, Washington,
11 98406, further described in Attachment A, and to seize the items listed in Attachment B,
12 which attachments are appended to this affidavit and incorporated herein by reference for
13 evidence, fruits, and instrumentalities of violations of Title 26, United States Code,
14 Section 7206(1) (False Tax Filing).

15 **IV. RELEVANT LEGAL PROVISIONS.**

16 11. Title 26, United States Code, Section 7206(1) provides that anyone who
17 "willfully makes and subscribes any return, statement, or other document, which contains
18 or is verified by a written declaration that it is made under the penalties of perjury, and
19 which he does not believe to be true and correct as to every material matter . . ." shall be
20 punished pursuant to the statute. The elements of the offense are as follows:

21 First, the defendant made and subscribed a return, statement, or other document
22 which was false as to a material matter;

23 Second, the return, statement, or other document contained a written declaration
24 that it was made under the penalties of perjury;

25 Third, the defendant did not believe the return, statement, or other document to be
26 true and correct as to every material matter; and

27 Fourth, the defendant falsely subscribed to the return, statement, or other
28 document willfully, with the specific intent to violate the law.

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V. INVESTIGATION

A. Background.

1. Troy X. Kelley

12. Troy Kelley is the current Washington State Auditor and a former member of the Washington State House of Representatives. Kelley holds a J.D. and M.B.A. and is a licensed attorney in Washington State. During law school, Kelley worked for the United States Attorney's Office in the Western District of New York. After graduating from law school and business school, Kelley worked as an attorney for United States Securities and Exchange Commission and then as a private attorney, concentrating on real estate title matters. Thereafter, Kelley worked for many years as counsel and general counsel for First American Title Company in California, eventually becoming president of the company's tax exchange division (First American Exchange Corporation, a qualified intermediary for 1031 deferred tax exchanges of like-kind investment property). In about 2000, Kelley moved to Washington State and then opened his own business. From about 2002 through 2008, Kelley operated United National, LLC, which did business under the name Post Closing Department (hereafter "Post Closing Department" or "PCD"). Kelley was first elected to the Washington State House of Representatives in 2006 and served three terms. In 2012, Kelley was elected Washington State Auditor.

13. Kelley's experience and background show that he has a sophisticated understanding of tax matters. Kelley is a trained attorney and has worked specifically with tax issues as they pertained to real estate dealings. A review of Kelley's federal tax filings indicates that he self-prepared most of his businesses' returns and personal returns for many years. Finally, during a sworn deposition taken on August 2, 2010, in connection with a civil lawsuit regarding reconveyance fees, Kelley acknowledged that he had taken tax courses, that he understood tax, and had even taught tax.

1 2. Blackstone International, Inc.

2 14. Pursuant to records from the Nevada Secretary of State, Blackstone
3 International, Inc. (hereinafter "Blackstone") was formed on or about October 26, 2000.
4 The Articles of Incorporation list Kelley as the sole officer and director of Blackstone.

5 15. Kelley remains the sole owner of Blackstone. I have reviewed federal
6 income tax returns for Blackstone and Kelley for the tax years 2006 through 2013.
7 According to the tax returns, 100 percent of Blackstone's declared flow-through income
8 flows through to Kelley's personal returns in those tax years. I also have reviewed
9 certain financial disclosure reports filed by Kelley with the Washington State Public
10 Disclosure Commission (hereinafter "PDC"). As a candidate and an elected state official
11 since 2005, Kelley is required pursuant to Washington State law to annually file reports
12 with the PDC that disclose, among other things, occupation, ownership interests in
13 business entities, and sources of income. These mandated reports are called Personal
14 Financial Affairs Statements or "F-1 Reports." The F-1 Reports are signed and submitted
15 by the candidate/official under penalty of perjury and are made publicly available through
16 the PDC. Beginning with the first F-1 Report filed in 2005 and continuing through
17 calendar year 2013, Kelley declared he owned 100 percent of Blackstone.¹

18 16. I believe Kelley has presented conflicting information about the true
19 purpose of Blackstone and whether the entity itself has been used to conduct any active
20 trade or business. According to Kelley's public F-1 Reports, Blackstone appears to be a
21 passive entity, i.e. not used to conduct an active business. Kelley has consistently
22 described the purpose of Blackstone in the F-1 Reports as a "holding company" or a
23 "company holding investments."

24 17. Blackstone further lacks other public indicia of a business that derives
25 income from actively providing goods and services. Blackstone's tax returns for the tax

26 _____
27 ¹ According to the PDC, full detailed F-1 Reports are filed by candidates and officials generally once every four
28 years. In the interim years, the candidate or official may file a shortened summary form that details only the
information that had changed from the last full report. Kelley has filed full detailed F-1 Reports for the 12 months
preceding approximately December 6, 2005, calendar years 2008, and 2012, with minor or no changes reported in
the interim years.

1 years 2006 through 2013, and Kelley's F-1 Reports all list Blackstone's business address
2 as Kelley's residence in Tacoma, Washington. However, to date, I have found no
3 evidence that Blackstone had ever obtained a Washington State business license or
4 reported any revenues to the Washington State Department of Revenue.

5 18. While the F-1 Reports indicate that Blackstone may be a passive "holding
6 company," Blackstone's federal tax returns present a very different picture of Blackstone.
7 I have reviewed Blackstone's Forms 1120S "U.S. Income Tax Return for an S
8 Corporation," filed for the tax years 2006 through 2013. As noted above, because Kelley
9 owns 100% of Blackstone, the total ordinary business income (or loss) declared on
10 Blackstone's Forms 1120S eventually flows through to Kelley's personal tax returns and
11 contributes to his personal income. These Blackstone corporate returns, in contrast to the
12 F-1 Reports, depicted Blackstone as an active business engaged in providing services or
13 products, and deriving substantial income and incurring substantial business expenses as
14 a result. First, rather than describing Blackstone as a "holding company," for the tax
15 years 2006 through 2009, the returns identified Blackstone's business activity as
16 "Information" or "Information Services," and declared that Blackstone's product or
17 service included "Recorded Documents." For the tax years 2010 through 2012, the
18 description of Blackstone's purpose changed slightly. In those tax years, Kelley
19 continued to declare that Blackstone's business activity consisted of "Information
20 Services," but the product or service offered was changed to "Document Tracking." For
21 the tax year 2013, Kelley indicated that Blackstone's business activity consisted of
22 "Information Services," but he did not declare any specific product or service.

23 19. Second, in many of the tax years from 2006 through 2012, Blackstone
24 reported hundreds of thousands of dollars of gross profits as a result of its business
25 activities – independent of income earned simply as a result of its ownership interests in
26 other entities – and deducted tens of thousands of dollars of purported expenses incurred
27 in the course of conducting this business. The types of business expenditures deducted
28 during these years included depreciation for vehicles that were purportedly used 100%

for Blackstone's business, attendance at conferences and education, business travel, communication costs, and thousands of dollars of "sales expenses." The following is a chart summarizing for each tax year reviewed, the amounts of gross receipts or profits Kelley declared was earned by Blackstone and the amount of deductible business expenses incurred in that year:

Tax Year	Blackstone's Gross Receipts or Profit	Business Expenses
2006	\$295,006	\$65,467
2007	\$158,742	\$51,447
2008	\$153,395	\$23,765
2009	\$0	\$33,291
2010	\$0	\$30,551
2011	\$245,000	\$66,147
2012	\$245,000	\$60,425

20. As further detailed below, there is probable cause to believe that at least with respect to the tax years 2011 and 2012, Blackstone was not actively engaged in the business of providing "document tracking" services and, therefore, the business expenses used to reduce the tax liability in those years were fraudulent.

3. United National LLC, dba Post Closing Department

21. The Washington Secretary of State records show that United National LLC (hereinafter "United National") was incorporated in Washington on or about August 2, 2002. Among the trade names formally registered to United National is Post Closing Department. From about 2002 through 2008, Kelley provided reconveyance tracking services to several escrow companies in Washington State through United National, dba Post Closing Department.

22. According to United National's original Operating Agreement dated August 2, 2002, Kelley was the LLC's manager and president. The same Operating

1 Agreement noted that, initially, Blackstone owned 50% of United National. The
2 ownership structure changed over the years. By the end of 2007, United National's
3 Schedule K-1 showed that Blackstone owned approximately 79% of United National.
4 Approximately 18% of United National was owned by an entity called Attorney Trustees
5 Services, which was, in turn, owned by Kelley's wife, and approximately 2.6 % was
6 owned by another entity called Mortgage Lending Inc. Finally, during a sworn
7 deposition taken on August 2, 2010, in connection with a civil suit filed by Old Republic
8 Title Ltd. against Kelley, Kelley testified in effect that when United National closed, he
9 believed Blackstone was United National's sole owner. According to the Washington
10 State Secretary of State's office, United National became inactive in about August of
11 2008.

12 4. Overview of real estate transactions and the role of reconveyance tracking
13 companies.

14 23. During the course of this investigation, I reviewed certain transcripts of
15 depositions and legal filings connected with the civil suits filed against escrow companies
16 regarding reconveyance fees. In addition, I participated in interviews or reviewed
17 memoranda of interviews of witnesses who worked in or with escrow companies.
18 Through these sources, I learned the following:

19 24. In Washington State, those buying a home or refinancing a home through a
20 mortgage typically grant deeds of trust to their lenders. By signing a deed of trust, the
21 borrower "conveys" the property to a trustee to hold it in trust for the lender to secure
22 payment of the loan. When the underlying loan is paid in full, such as through the sale of
23 the property or a subsequent refinancing, the trustee must transfer title to the home back
24 to the borrower. That process is called a "reconveyance." Generally, in order to perfect a
25 reconveyance, the trustee must, first, execute a document reconveying title back to the
26 borrower, and, second, record that document with the relevant county's recording office.

27 25. Escrow companies provide settlement and escrow services for residential
28 real estate transactions. They are responsible for preparing settlement statements,

1 collecting and disbursing loan funds and sale proceeds, and for ensuring that the pertinent
2 documents are prepared and recorded to facilitate transfer of good title, including
3 reconveyances. The process of preparing and recording reconveyances, however, has
4 attendant costs. For example, those who serve as trustees generally receive a service fee
5 to prepare and record the reconveyance. Recording fees are also paid to county recording
6 offices in order to record the reconveyance. Escrow companies, therefore, often charge at
7 closing a "reconveyance processing fee" in amounts ranging typically between \$100 and
8 \$150, sufficient to cover anticipated reconveyance costs.

9 26. As the sheer volume of real estate transactions rose over the years, some
10 escrow companies outsourced the oversight of the reconveyance process to tracking
11 companies. The escrow companies typically paid reconveyance tracking firms a tracking
12 fee for each real estate transaction tracked. The fees paid to reconveyance tracking firms
13 were often included in the total reconveyance processing fee assessed the escrow
14 customer at the time of closing. In some cases, rather than pay the tracking firm just their
15 fees, escrow companies turned over the entire reconveyance processing fee to the
16 tracking company. When that happened, it was the reconveyance tracking company's
17 responsibility not only to account for and take its own fees for its services, but also to pay
18 any attendant third-party costs, such as trustee fees and recording fees. As further
19 detailed below, service agreements between escrow companies and tracking firms often
20 specified that any unused portion of the reconveyance processing fees were to be returned
21 to the original party that had paid the fees.

22 27. As escrow companies increasingly turned to third-party reconveyance
23 tracking services to monitor reconveyances, separately, many of the major lenders also
24 changed the manner in which they handled reconveyances. Namely, major lenders began
25 to perform much of the reconveyance process themselves, including preparing and filing
26 the reconveyances, and either included the trustee fees and recording fees in the final loan
27 payoff amount or performed the work for free. This change meant that much of the
28 reconveyance processing fees charged by escrow companies at closing, including trustee

1 fees and recording fees, were duplicative and not necessary. Consequently, where
2 escrow companies had turned over the entire reconveyance processing fee to a third party
3 reconveyance tracking company, the reconveyance tracking company also no longer
4 needed to pay for trustee services and recording fees out of the lump sum entrusted to it.

5 **B. From 2002 through 2008, Kelley Provided Reconveyance Tracking**
6 **Services and Accumulated Millions in Reconveyance Processing Fees.**

7 28. Beginning in or about 2002 and continuing through 2008, Kelley's
8 company, United National, LLC, provided various escrow companies in Washington
9 State reconveyance tracking services under the trade name Post Closing Department or
10 PCD. Kelley's escrow company clients included Stewart Title of Snohomish County
11 (hereinafter "Stewart"), Fidelity National Title (hereinafter "Fidelity"), and Old Republic
12 Title Company (hereinafter, "Old Republic").

13 29. Stewart: During the course of this investigation, IRS Special Agents
14 interviewed Carl Jorgenson. Jorgenson is a former president of Stewart. According to
15 Jorgenson, Stewart could have engaged PCD's services as early as 2002. Jorgenson
16 believed that PCD received about \$125 per real estate transaction, of which between \$25
17 and \$45 was PCD's fee for its tracking services. The remainder of the amount was
18 provided in case PCD had to pay county recording fees. However, if a reconveyance fee
19 had already been paid up front, i.e. the lender had already collected the fee, Jorgenson
20 explained that PCD was to take only the agreed upon tracking fee and refund the rest to
21 the seller. Although Jorgenson stated that there was a written agreement detailing the
22 terms of service, the investigation to date has not recovered a written agreement between
23 Stewart and PCD. PCD may have ceased providing reconveyance services to Stewart by
24 sometime in 2007.

25 30. Fidelity: During the course of this investigation, I reviewed a written
26 "Agreement for Post Closing Services" entered between Julie Yates, Escrow Operations
27 Manager and Vice President, on behalf of Fidelity, and Kelley for PCD. The agreement
28 was signed by Yates on October 9, 2003. A copy of the agreement was provided to law

1 enforcement by representatives of Fidelity, however the agreement contained only the
2 signature of Yates and did not include a corresponding signature of Kelley. During an
3 interview with IRS Special Agents, Yates confirmed that this agreement with her
4 signature was the agreement she executed with Kelley on behalf of Fidelity.

5 31. The agreement between Fidelity and PCD specified that, in return for PCD
6 receiving, tracking and preparing "all reconveyances and satisfaction of mortgages from
7 both escrow and title," Fidelity would pay PCD a \$15.00 post closing tracking fee per
8 item. Yates confirmed that the agreement entitled PCD to a fee of \$15.00 per
9 reconveyance. The agreement further specified that Fidelity would collect and pay over
10 to PCD the reconveyance fee assessed customers, and that expenses "such as trustee fees
11 and recording fees that are associated with a file will be advanced and charged to that
12 file. At the completion of post closing documentation, if extra funds are left over, PCD
13 shall forward funds to Customer" Yates's understanding, consistent with this
14 agreement, was that PCD would receive the entirety of reconveyance fees assessed at
15 closing, including fees for trustee services and recording, and that PCD was responsible
16 for refunding directly to the party that had paid the reconveyance fees any unused funds.
17 Yates stated that Fidelity assessed reconveyance processing fees in the range of \$120.00
18 to \$150.00 per file, which were then turned over to PCD to administer in accordance with
19 the contract. PCD stopped performing reconveyance services for Fidelity in 2008.

20 32. Old Republic: During the course of this investigation, I have reviewed an
21 "Agreement for Post Closing Services" entered into between Carleton Lago, Senior Vice
22 President and Secretary, on behalf of Old Republic, and Kelley for PCD. The parties
23 signed the agreement on May 8th and May 4th of 2006, respectively. Pursuant to the
24 agreement, PCD was to "receive, track, prepare and obtain all reconveyances and
25 satisfaction of mortgages from client's closed escrow and title files" for which Old
26 Republic would pay a "\$20.00 post closing tracking fee per item." The agreement further
27 specified that the "fee includes management of funds due trustees & client refunds" and
28 that PCD would provide Old Republic "with monthly progress reports of reconveyance

1 activity on each of client's files being tracked as well as an accounting on all funds
2 received from client that have been disbursed and/or refunded to principals."

3 33. I reviewed the transcript of deposition testimony of Carleton Lago taken on
4 August 4, 2010, in connection with a civil suit filed by Old Republic against Kelley.
5 During the deposition, Lago was asked about the terms of the agreement entered between
6 PCD and Old Republic. Mr., Lago testified that, prior to signing the contract, sometime
7 in March or April 2006, he and others from Old Republic met personally with Kelley
8 during which time Lago made clear that Old Republic would pay a flat fee of only \$20
9 per reconveyance tracked and that moneys not paid to trustees for recording fees would
10 be returned to the escrow customer. Lago stated that Kelley assured Old Republic that he
11 understood those terms. The agreement, therefore, did not provide for anything more
12 than a flat \$20 fee for all reconveyance tracking services, and, if funds were not used for
13 third party expenses, PCD was obligated to return remaining funds to the original payor.
14 According to Lago, PCD ceased providing reconveyance services to Old Republic in the
15 summer of 2008.

16 34. During the course of this investigation I, as well as a forensic accountant
17 and a Special Agent from the Federal Bureau of Investigation, reviewed certain bank
18 accounts opened at Columbia Bank and held in the name of United National. An analysis
19 of these accounts revealed that generally, United National deposited reconveyance fees
20 received from Stewart, Fidelity, and Old Republic into three separate Columbia accounts
21 established for each escrow company. Reconveyance fees from Stewart were deposited
22 into Columbia account *8074; Reconveyance fees from Fidelity were deposited into
23 Columbia account *8249; and reconveyance fees from Old Republic were deposited into
24 Columbia account *1629. On the whole, the analysis showed that fees and refunds for
25 reconveyances associated with a particular escrow company were paid out of the
26 corresponding escrow company account. In other words, fees and refunds associated
27 with transactions closed by Fidelity were generally paid out of the Fidelity Columbia
28 account *8249, and fees and refunds associated with transactions closed by Old Republic

1 were generally paid out of the Old Republic Columbia account *1629. From time to
2 time, Kelley also transferred sums out of the three separate Columbia client accounts into
3 a fourth Columbia bank account *5529 opened in the name of United National from
4 which it appeared Kelley made general business expenditures, including salaries and
5 distributions to himself.

6 35. Analysis of deposits into the three Columbia escrow company accounts
7 from January 1, 2006, through 2008 showed that each escrow company provided PCD
8 numerous checks in amounts between \$100 and \$150, or some multiple of these amounts.
9 These amounts corresponded to the reconveyance processing fees assessed and collected
10 by Stewart, Fidelity and Old Republic at closing and sent to PCD to administer pursuant
11 to their respective service agreements. Further analysis of the same accounts revealed,
12 however, that during the time period between January 1, 2006, through 2008, PCD issued
13 very few refunds to escrow customers even though many of the files appeared not to have
14 required PCD to pay trustee or recording fees. As a result, the individual bank accounts
15 that held reconveyance fees from the various escrow companies carried large balances
16 consisting of unpaid trustee and recording fees.

17 36. For example, an analysis of Columbia account *8249, used to collect
18 Fidelity fees, showed that, between 2006 and 2008, PCD received more than \$2.5 million
19 in fees for tracking more than 17,000 items. However, during that same time period, only
20 approximately 464 checks were written to county recording offices and/or trustees for a
21 total amount of approximately \$54,000, but only approximately 25 checks were written to
22 customers for refunds, in a total amount of approximately \$4,000.

23 37. An analysis of the Columbia account used to collect Old Republic fees
24 showed a similar pattern. Between 2006 and 2008, PCD received more than \$1.2 million
25 in fees for tracking more than 7,500 items. However, during that same time period, only
26 approximately 150 checks were written to county recording offices and/or trustees in a
27 total amount of approximately \$21,000, but only approximately 30 checks were written to
28 customers for refunds in a total amount of approximately \$6,000.

1 38. An analysis of the Columbia account used to collect Stewart fees also
2 showed a similar pattern. In 2006, prior to ceasing its services of Stewart, PCD received
3 approximately \$300,000 in fees. During that same time period, there were approximately
4 24 checks written to county recording offices and/or trustees in a total amount of
5 approximately \$4,000, but only approximately four checks written to customers for
6 refunds in a total amount of approximately \$400.

7 39. From time to time PCD also appeared to have issued some payments for
8 trustee services, county recording fees, and customer refunds relating to the three escrow
9 companies out of two other business accounts controlled by Kelley. The total amount of
10 possible such payments is approximately \$150,000 for trustee and/or county recording
11 fees, and approximately \$9,000 in refunds to customers.

12 40. In sum, the analysis of the United National related bank accounts believed
13 to have been utilized by Kelley in connection with his reconveyance tracking business
14 appeared to show that from about 2006 through 2008, a major portion of the
15 reconveyance fees entrusted to Kelley by the various escrow companies were retained
16 and not paid out to either trustee, county recording offices, or refunded back to the
17 original escrow customer. As a result, by June 12, 2008, the Stewart Columbia account
18 *8074 held approximately \$532,096; the Fidelity Columbia account *8249 held
19 approximately \$2,361,181; and the Old Republic Columbia account *-1629 held
20 approximately \$888,950.

21 **C. As Law Suits Were Filed Against Fidelity and Old Republic, Kelley Ceased**
22 **Business and Transferred Accumulated Reconveyance Fees to a New Entity.**

23 41. On about May 14, 2008, putative class action lawsuits were filed on behalf
24 of escrow customers in the United States District Court for the Western District of
25 Washington against two of Kelley's escrow company clients: *Cornelius v. Fidelity*
26 *National Title Insurance*, 08-cv-754MJP (W.D.WA) and *McFerrin v. Old Republic Title*,
27 08-cv-5309BHS (W.D.WA). The complaints in these actions alleged, among other
28 things, that Fidelity and Old Republic were collecting duplicative and unnecessary

1 reconveyance fees while knowing that major lenders had already collected such fees
2 elsewhere or were performing the reconveyance at no cost. In the course of litigation,
3 Fidelity and Old Republic both denied any wrongdoing and further countered that they
4 had turned over the responsibility for administering reconveyance fees, including the
5 responsibility for refunding any unused funds, to third party reconveyance tracking
6 companies, including Kelley's PCD.

7 42. Approximately a month after the law suits were first lodged, Kelley,
8 through a rapid series of transactions using newly-opened bank accounts, suddenly
9 moved and consolidated the funds remaining in the three Columbia Bank United National
10 accounts that held reconveyance fees from Stewart, Fidelity, and Old Republic. The
11 following is a chronology of account openings and transfers believed to have been
12 initiated or caused to be initiated by Kelley:

- 13 • About June 10, 2008, Kelley opened a new bank account in the name of
14 United National at Wells Fargo Bank, account *3310.
- 15 • On about June 12, 2008, Kelley wired a combined total of \$3,782, 227,
16 from the three separate Columbia Bank accounts that held fees from
17 Stewart, Fidelity and Old Republic, to the newly opened United National
18 account *3310 at Wells Fargo Bank.
- 19 • On about June 12, 2008, Kelley opened yet another new account, this time
20 at U.S. Bank, in the name of United National, account number *7633.
- 21 • On about June 13, 2008, Kelley transferred via wire \$3,785,667, from the
22 Wells Fargo United National account *3310, to the new U.S. Bank account
23 *7633.
- 24 • On about June 17, 2008, Kelley opened a new checking account *6040 at
25 Nevada State Bank, this time in the name of Blackstone.
- 26 • On about June 18, 2008, Kelley transferred via wire \$3,784,619, from the
27 United National U.S. Bank account *7633 to the Nevada State Bank
28 account *6040, held in the name of Blackstone.

- On about June 23, 2008, Kelley transferred \$149,870 from Blackstone's Nevada State Bank account *6040, to a Blackstone account opened at Vanguard.
- On about June 23, 2008, according to corporate records from the Secretary of State of Nevada, Kelley formed a new partnership, Berkeley United, LLC. At the time Berkeley United was established, according to its federal tax returns, Blackstone owned 1%. The other 99% was owned by Wellington Trust, a trust domiciled in Belize. Wellington Trust, in turn, was controlled by Kelley and also newly established during 2008.
- On about June 26, 2008, Kelley opened a new Vanguard account *8746 in the name of Berkeley United.
- Finally, on about June 27, 2008, Kelley transferred via wire \$3,634,673 from the Blackstone Nevada State Bank account *6040 to the Berkeley United Vanguard account, leaving approximately \$15 in the Nevada State Bank account.

D. From Tax Years 2008 through 2010, Kelley Did Not Pay Tax On the More than \$3 Million in Reconveyance Fees Transferred to Berkeley United.

43. On or about March 6, 2009, Kelley signed and caused to be filed the first U.S. return of Partnership Income Form 1065 for Berkeley United, LLC. In contrast to most returns associated with Kelley, this return was not prepared by Kelley but instead was prepared by a paid-preparer. For the tax year 2008, Berkeley United reported a total income of \$43,658. This income flowed through to Berkeley United's partners, who, at the time were Blackstone and Wellington Trust. The Berkeley United return, however, did not list as income the more than \$3.6 million transferred to its Vanguard account on June 27, 2008. Instead, the Berkeley United tax return included a schedule and a statement that noted that Berkeley United held as an asset and corresponding liability approximately \$3.6 million in cash in an "impound holding account."

1 44. Subsequently, Kelley caused to be prepared and filed, through the same
 2 paid preparer, Forms 1065 on behalf of Berkeley United for tax years 2009, 2010 and
 3 2011. In each of those years, Berkeley United again did not declare the more than \$3
 4 million it held in its name as income, and instead, as with tax year 2008, continued to
 5 show that it held the sum in an "impound holding account" as an asset and a
 6 corresponding liability.

7 45. Then, beginning with tax year 2011 and continuing through tax years 2012,
 8 and 2013, Blackstone's tax returns included a self-prepared workpaper that purported to
 9 detail an "impound account history," including balances remaining in an "impound
 10 account" and amounts of "income paid" to Blackstone. The tax treatment by Blackstone
 11 of the amounts paid to Blackstone by Berkeley United from this "impound account" will
 12 be discussed in more detail below.

13 **E. In 2010, Kelley Testified Under Oath that the Millions Moved to Berkeley**
 14 **United in 2008 Had Been Earned by Post Closing Department for Past**
 15 **Services, But Acknowledged He Had Yet to Pay Tax on the Amount.**

16 46. As a result of the class action lawsuits, throughout 2008 and 2009, counsel
 17 for both Fidelity and Old Republic sought information and records from Kelley
 18 including, among other things, an accounting of what had happened to the millions of
 19 dollars of reconveyance processing fees entrusted by them to PCD. On about December
 20 10, 2009, Old Republic brought a separate suit directly against Kelley. This case was
 21 eventually removed to the United States District Court for the Western District of
 22 Washington and captioned *Old Republic v. Kelley, et. al.*, 10-cv-0038JLR. According to
 23 the complaint filed in the case, Old Republic alleged that Kelley had agreed in 2006 to
 24 perform reconveyance tracking services for a flat fee of \$20.00 per escrow transaction,
 25 and to refund all unused reconveyance processing fees to borrowers, but instead had
 26 improperly kept the excess reconveyance fees for his own enrichment.

27 47. On August 2, 2010, Kelley was deposed under oath by counsel for Old
 28 Republic in connection with this litigation. During the deposition, Kelley denied that he
 agreed to provide reconveyance services to Old Republic for a single flat fee. Instead,

1 Kelley testified that, in addition to the written service agreement, Old Republic and PCD
2 had an unwritten understanding that PCD would and did charge additional fees above and
3 beyond the \$20 "tracking fee" that would, in essence, eat up most if not all of the \$140 to
4 \$150 reconveyance fees entrusted to PCD from Old Republic. These additional fees were
5 incurred whenever PCD staff had to do additional work to make sure a reconveyance was
6 recorded, such as perform "additional searches on a file," "contact a lender," "follow-up
7 with a lender," and "search court files."

8 48. Kelley claimed that this understanding was reached during a meeting with
9 Carl Lago, the representative of Old Republic, prior to signing the written service
10 agreement. According to Kelley, Lago told him to "work the file." Kelley interpreted
11 that comment, in light of "standard practice in the industry," as permission to add fees for
12 additional work. Kelley also testified that this practice of charging additional fees on top
13 of the initial tracking fee was the same for Fidelity and Stewart. When asked by Old
14 Republic counsel for an estimate of the typical amount of fees earned by PCD on an Old
15 Republic transaction, Kelley responded that "\$100.00 per item was possible." Kelley
16 estimated that, for his other escrow customers, including Stewart and Fidelity, PCD also
17 earned about "\$100 or more" per item.

18 49. Kelley further stated during the deposition that he moved to consolidate the
19 approximately \$3.6 million in reconveyance fees that had been accumulating in separate
20 client bank accounts for Stewart, Fidelity, and Old Republic because he was in the
21 process of closing down the Post Closing Department business. Kelley testified that in
22 June 2008, he had performed a final reconciliation of work done on each of the client
23 accounts and determined that he was entitled to keep the remaining balances as "fees
24 earned" for "services provided."

25 50. Finally, in response to questions from counsel as to whether Kelley ever
26 intended to pay taxes on the nearly \$3.6 million, Kelley testified that while the sums he
27 retained in Berkeley United's Vanguard account had been "earned," the income had not
28 been "realized," and that he would pay taxes on the amount when he was told to by his

1 attorney. When asked by Old Republic counsel when the income was going to be
2 "realized," Kelley responded that he did not know exactly but his understanding was that
3 it would be realized over time.

4 **F. Beginning in 2011, Kelley Initiated a Scheme to Reduce His Tax Liability on**
5 **the Retained Reconveyance Fees by Deducting False Business Expenses.**

6 1. After the law suits were dismissed or settled, Kelley began drawing down
7 the reconveyance fees he had taken in 2008 in \$245,000 yearly increments.

8 51. A review of the relevant court documents revealed that on about September
9 8, 2009, the putative class action suit filed against Old Republic was dismissed, in part,
10 on grounds that no provision of the escrow contract made Old Republic responsible for
11 proper administration of reconveyance fees. Likewise, on about April 1, 2010, the Court
12 dismissed what remained of the putative class action suit filed against Fidelity. The
13 Court found that Fidelity had not breached any escrow agreement because Fidelity was
14 not obligated by the escrow agreement with borrowers to ensure that Post Closing
15 Department properly refunded reconveyance fees. Finally, according to information
16 received from outside counsel for Old Republic, on or about May 3, 2011, Kelley reached
17 a settlement with Old Republic in their direct dispute. According to the settlement
18 agreement, Kelley agreed to return to Old Republic approximately \$1,150,000, which
19 was to be refunded to Old Republic's customers. On or about May 11, 2011, Kelley wire
20 transferred \$1,050,000 out of the Berkeley United Vanguard account *8746 toward the
21 payment of the settlement.

22 52. After paying the Old Republic settlement, Kelley had remaining
23 approximately \$2,581,653 in the Berkeley United Vanguard account. On about June 3,
24 2011, Kelley wired \$245,030 from the Berkeley United Vanguard account *8746 to a
25 Wells Fargo Berkeley United account *7983. On about June 7, 2011, Kelley wrote a
26 check from the Wells Fargo Berkeley United account *7983 in the amount of \$245,000 to
27 Blackstone International and deposited the check into Columbia bank account *8470,
28

1 held in the name of Blackstone. No further withdrawals from the Berkeley Vanguard
2 account were made in 2011.

3 53. The following year, on about January 6, 2012, Kelley wrote another
4 \$245,000 check from the Berkeley Vanguard account *8746 to Blackstone and deposited
5 the check into Blackstone's Columbia account *8470. Then, on February 1, 2012, Kelley
6 took \$2,090,818, which was the vast majority of the remaining balance, from the
7 Berkeley United Vanguard account *8746 and deposited the amount into a Vanguard
8 account *6680 opened in the name of Blackstone. No further withdrawals were made
9 from the sums deposited into the Blackstone Vanguard account in 2012. Berkeley United
10 was dissolved sometime in 2012.

11 54. Finally, on January 3, 2013, Kelley wrote yet another check for \$245,000
12 from the Vanguard Blackstone account *6680 to Blackstone and deposited the sum into
13 Blackstone's Columbia account *8470.

14 2. For tax years 2011 through 2012, Blackstone declared the \$245,000
15 transferred from Berkeley United as income and offset the income with
16 significant business expenses.

17 55. On or about February 28, 2012, Kelley signed under penalty of perjury and
18 filed Form 1120S Income Tax Return for an S Corporation on behalf of Blackstone for
19 the tax year 2011. The return was not signed by any paid preparer. As a result, I believe
20 that Kelley prepared the return himself. The address listed for Blackstone was Kelley's
21 residence located at 2521 Fremont Street, Tacoma, Washington, 98406.

22 56. On the return, Kelley declared that Blackstone's business consisted of
23 "Information Services" and the product or service that Blackstone offered was
24 "Document Tracking." Kelley further declared that the company made gross profits of
25 \$245,000 for tax year 2011. The amount declared corresponded to the \$245,000 Kelley
26 had disbursed to Blackstone from Berkeley United. The income assigned to Blackstone,
27 however, was significantly offset by business expense deductions that totaled \$66,147.
28 According to an attached Form 4562 (Depreciation and Amortization), approximately
\$28,535.32 of the declared expenses consisted of depreciation for two vehicles, including

1 a vehicle "placed in service" in 2011. Kelley indicated in Form 4562 that both vehicles
2 were used 100% for the business. In addition, other business deductions were summarily
3 described in a personally prepared workpaper entitled "Profit & Loss Statement," and
4 appended to Blackstone's return. The workpaper noted, for example, \$5,162.21 in fuel
5 expenses, \$8,830.40 in business travel, \$3,065.48 in conference education expenses,
6 \$7,402.12 in "sales" expenses, and \$2,974.35 for subscriptions and books.

7 57. On or about February 2, 2013, Kelley signed under penalty of perjury and
8 filed Form 1120S on behalf of Blackstone for the tax year 2012. Kelley continued to
9 declare Blackstone's business as consisting of "Information Services" and the product or
10 service offered as "Document Tracking." Blackstone again declared gross profits of
11 \$245,000, corresponding to the \$245,000, transferred in January 2012 from Berkeley
12 United to Blackstone. And again, as with Blackstone's 2011 tax return, Blackstone's
13 income in 2012 was significantly offset by business expenses totaling \$60,425. Attached
14 to the 2012 Form 1120S was a personally prepared workpaper summarizing various
15 categories of claimed business expenses. The workpaper noted, among other things,
16 \$5,953.85 in fuel costs, \$12,573.81 in business travel, \$4,979.40 in a category entitled
17 "conference education," \$9,975.04 in "sales" expenses, and \$6,270 in depreciation for a
18 vehicle. On the attached Form 4562 that detailed the depreciated vehicle, Kelley noted
19 that the vehicle claimed was used 100% for business and that the vehicle had been driven
20 15,000 miles during that year.

21 58. As a result of the business expense deductions claimed on Blackstone's
22 2011 and 2012 tax returns, Kelley reduced Blackstone's ordinary business income for
23 each of those years. Because Blackstone's ordinary business income was reportable on
24 Kelley's personal tax return, Kelley also reduced his own taxable income for each of
25 those years. The overall effect of the claimed expenses was to reduce Kelley's personal
26 tax obligation by approximately \$20,000 in each of 2011 and 2012.

1 3. Kelley knowingly claimed false business expenses in 2011 through 2012 to
 2 reduce tax.

3 59. Pursuant to the Internal Revenue Service, businesses are permitted to
 4 deduct "ordinary and necessary" business expenses paid or incurred in the course of the
 5 taxpayer's trade or business.

6 60. There is probable cause to believe that the tens of thousands of dollars in
 7 business expenses claimed in Blackstone's tax returns for each of the tax years 2011 and
 8 2012 were knowingly false and are likely personal expenses incurred in those years or
 9 wholly fictitious. That is because there is evidence that Kelley did not conduct any
 10 document tracking business activity in 2011 or 2012 in order to earn the \$245,000 of
 11 reported income.

12 61. First, the \$245,000 amounts paid to Blackstone in each of 2011 and 2012
 13 were derived from reconveyance fees that had accumulated back in 2008 in three
 14 Columbia bank accounts for Stewart, Fidelity and Old Republic. In the August 2, 2010,
 15 deposition taken in the case of *Old Republic v. Kelley*, Kelley testified under oath that the
 16 fees in those accounts were for *past* services already provided. In other words, there was
 17 nothing further Kelley or his business had to do to earn the money. The questions and
 18 answers from the relevant portion of the transcript were as follows:

19 Q: We talked about the 800 or so thousand dollars that you had in Old
 20 Republic Title's bank account in June 2008, and how your position
 21 is that that was money that you'd earned over the previous two
 years, correct?

22 A: Yes.

23 Q: You also pulled out of other accounts at that point in time another
 approximately \$3.3 million?

24 A: Yes.

25 Q: Was that also for fees that you'd earned in the previous years
 working for those companies?

26 A: Those are for fees earned and services provided, correct.

27 62. Second, Kelley consistently listed Blackstone's business address in the
 28 company's tax filings as his residence in Tacoma, Washington. However, there is no

1 evidence that Blackstone ever applied for or received a business license in Washington
2 State, or reported any revenues to the Washington State Department of Revenue,
3 including the \$245,000 that, pursuant to the federal tax returns, Blackstone earned in each
4 of 2011 and 2012 by providing "document tracking" services. Evidence shows that
5 Kelley is well aware of the requirement to obtain requisite business licenses for active
6 businesses and to report to the Department of Revenue. For example, from 2006 through
7 2008, when United National, a partnership primarily owned by Blackstone, was actively
8 engaged in providing reconveyance tracking services, Kelley duly registered with the
9 Washington State Department of Licensing, and reported its purported revenues to the
10 Washington State Department of Revenue. All reporting to the Washington State
11 Department of Revenue for United National ceased after 2008 when United National was
12 closed. There is no evidence, however, that Blackstone obtained a separate business
13 license in Washington State, or opened a separate account with the Department of
14 Revenue to support the notion that it was conducting an active business out of Kelley's
15 Tacoma home.

16 63. Third, Kelley's required F-1 Reports filed with the PDC and detailed above
17 also appear to contradict the claim that Blackstone in 2011 and 2012 actively conducted a
18 document tracking business. The F-1 Report is organized in a manner to prompt the
19 filing official to distinguish between sources of income derived from activity, such as
20 employment, from those that are earned more passively, such as through interest
21 payments or earnings from bank accounts, stocks, bonds, and other investment vehicles.
22 The F-1 Reports direct the filer to identify sources of "Income" in Section 1 and
23 "Assets/Investments – Interest/Dividends" in Section 3.

24 64. Since 2005 and continuing through calendar year 2013, Kelley's F-1
25 Reports consistently listed Blackstone only in Section 3 as simply a company in which he
26 held an ownership interest. In contrast, for calendar years 2005 through 2008, Kelley's
27 F-1 Reports listed United National both under Section 1, as a source of income from
28 active employment, and in Section 3 as a company in which he held ownership interest.

1 Furthermore, as is required by the F-1 Reports, Kelley listed United National's major
2 business customers from whom it received substantial income. This is consistent with the
3 evidence that showed that during this period of time, Kelley was actually providing
4 reconveyance tracking services through United National. However, while Blackstone's
5 federal tax returns for tax years 2011 and 2012 indicated that it earned \$245,000 per year
6 providing "document tracking" services, the F-1 Reports for the same years still listed
7 Blackstone only in Section 3 as an asset, and contained no list of any major business
8 customers.

9 65. Fourth, an analysis of expenditures Kelley made from a known bank
10 account associated with Blackstone was unable to corroborate a number of the categories
11 of business expenses claimed on the 2011 and 2012 Blackstone returns. An FBI forensic
12 accountant reviewed records pertaining to the Columbia Bank account *8470 held in the
13 name of Blackstone. The forensic accountant focused on this account because bank
14 records showed that the \$245,000 annual payments from Berkeley United were ultimately
15 deposited into this Blackstone Columbia Bank account.

16 66. According to the analysis, for tax year 2011, the vast majority of
17 withdrawals from the Blackstone Columbia Bank account *8470 were either disbursed to
18 Kelley personally, used to purchase a vehicle, or used to pay an American Express Credit
19 Card account *92000, issued in the name of Kelley. A further analysis of the American
20 Express Credit Card account *92000 statements for 2011 showed that Kelley used the
21 card to pay for myriad of items such as hotels, restaurants, transportation expenses and
22 some utility bills. While the forensic accountant was able to match dollar for dollar the
23 amounts Kelley claimed for cell phone expenses and other telephone related expenses in
24 Blackstone's 2011 tax return with amounts Kelley paid through his American Express
25 Card account *92000 for such services in 2011, the analysis to date has not been able to
26 identify the source for other claimed categories of expenses. For example, the forensic
27 accountant was unable to match the amounts claimed by Kelley in Blackstone's 2011
28 return for business travel expenses or conference and education expenses through an

1 analysis of either the Blackstone Columbia bank account *8470 or the American Express
2 Card account *92000.

3 67. For tax year 2012, the forensic accountant was able to match amounts paid
4 from the Blackstone Columbia account *8470 to an accountant in 2012 with amounts
5 declared by Kelley in Blackstone's 2012 tax return as an "accounting fee" expense, but,
6 as with tax year 2011, the forensic accountant was not able to match many other
7 categories of declared business expenses.

8 68. Fifth, major categories of ordinary and necessary business expenses that
9 Kelley claimed during prior tax years when he was actually conducting a "document
10 tracking" business are strangely absent from the 2011 and 2012 returns filed for
11 Blackstone. Instead, Kelley reports through Blackstone significant amounts of expenses
12 for categories that he had not previously deducted in connection with his tracking
13 business. This discrepancy in the types and amounts of expenses claimed between the
14 two periods of time supports the belief that the expenses claimed in 2011 and 2012
15 through Blackstone are not related to any legitimate document tracking business.

16 69. For example, for tax years 2006 through 2008, when United National LLC,
17 dba as Post Closing Department, was clearly providing tracking services for clients such
18 as Fidelity and Old Republic Title, Kelley claimed in the United National Forms 1065
19 salaries and wage expense deductions of \$318,435.65, \$339,235.76, and \$152,658.48,
20 respectively. In 2011 and 2012, however, when Blackstone was purportedly conducting
21 the same "document tracking" business to earn the same fees, it claimed zero deductions
22 for salaries or wages. Likewise, in United National's Forms 1065 for tax years 2006
23 through 2008, Kelley claimed a combined total of \$59,568.50, in rent expenses. In 2011
24 and 2012, however, when Blackstone was purportedly conducting the same business, it
25 reported no rent expenses. Rather than reporting wage and rent expenses, in 2011 and
26 2012, Blackstone claimed deductions for significant amounts related to business travel
27 and travel and entertainment. In tax years 2011 and 2012, Blackstone reported a
28 combined total of \$21,404 in business travel expenses and \$8,688 in travel and

1 entertainment deductions. In tax years 2006 through 2008, however, when United
2 National was actually conducting document tracking, it did not claim any business travel
3 or travel and entertainment deductions.

4 70. Sixth, I have reason to believe that the purported expenses claimed in the
5 Blackstone returns for tax years 2011 and 2012 are intended by Kelley to reflect expenses
6 incurred in 2011 and 2012, and do not represent some form of deferred or accrued
7 expenses from past years when he actually operated Post Closing Department. That is
8 because analysis of the expenses claimed showed that at least for the items that the
9 analysis was able to match with actual expenditures out of a Blackstone bank account, the
10 expense was actually incurred in the tax year reported. For example, as noted above, a
11 forensic accountant was able to match the dollar amount claimed as cell phone expenses
12 in Blackstone's 2011 tax return with amounts paid through Kelley's American Express
13 Card in 2011 toward a cell phone account. In addition, the 2011 Blackstone Form 1120S
14 claimed depreciation for a vehicle that Kelley noted in the return itself as having been
15 "placed in service" beginning November 30, 2011.

16 71. Seventh, in a voluntary interview conducted with IRS Criminal Special
17 Agents, Kelley provided statements regarding how he earned the income declared in
18 Blackstone's tax returns that contradicted earlier testimony. On about April 19, 2013,
19 after Kelley signed and filed the Blackstone Form 1120S for the tax year 2012, he
20 consented to an interview with Special Agents with the IRS. During the interview,
21 Kelley was asked to explain his tax treatment of fees he had consolidated in 2008 but did
22 not declare as income. Among other things, Kelley claimed that, pursuant to certain
23 guidance he had received in years past, he understood that the reconveyance fees should
24 be kept in an impound account and drawn down only when earned, at which point the
25 taxpayer should report the money as income and pay tax on it. Kelley stated that the
26 reconveyance fees from 2008 were kept in a Blackstone account, and the tax returns
27 showed that they were held in an impound account. Kelley explained that the money was
28 sitting in an impound account because work on these reconveyances had not been

1 completed. He further stated that each year he or his company did work and moved the
2 money over as it was earned. Once earned, Kelley stated that he reported the amount on
3 the relevant tax returns. Kelley emphasized that reconveyances typically take about 10
4 years, and that there were "a whole host of charges that are not done yet."

5 72. Kelley's explanation that he or his company were conducting further work
6 to earn the reconveyance fees originally taken in 2008 directly contradicted his testimony
7 from the August 2, 2010, deposition during which he confirmed that the fees taken in
8 2008 had fully been earned as a result of past "services provided." Given that he had
9 testified previously that fees had already been earned, the claim that additional work and,
10 therefore, additional business expenses, were necessary to earn again the same
11 reconveyance fees make little sense.

12 73. Finally, after Kelley was contacted by the IRS, Blackstone's subsequent tax
13 returns changed and Kelley no longer claimed certain types of business expenses or the
14 amounts he had previously claimed for tax years 2011 and 2012. Approximately 10
15 months after being contacted by IRS Special Agents, on about February 27, 2014, Kelley
16 signed and filed Blackstone's Form 1120S for the tax year 2013. This tax return is
17 notable in that, although Blackstone declared the same amount of gross profits as in prior
18 years -- \$245,000 -- the business expenses that were necessary to "earn" those fees
19 changed dramatically from prior years. According to the return, Kelley sold the vehicle
20 previously used for the business and auto related expenses were reduced significantly.
21 Business travel expenses dropped to \$3,816, and subscriptions and books, which in the
22 prior year amounted to \$2,695.38, dropped to \$988.01. Kelley also no longer declared
23 any depreciation for vehicles or any expenses for conferences and education.

24 VI. RELEVANCE OF ITEMS SOUGHT BY WARRANT

25 74. As set forth more fully in Attachment B, this affidavit seeks authority to
26 search for and seize evidence of false tax filings for Blackstone International for the tax
27 years 2011 and 2012. The specific items sought include not only the Blackstone tax
28 returns and all receipts, accounting records, and other documentation that relate to the

1 particular tax years under suspicion, but records relating to Blackstone's filings for other
2 tax years from 2006 through 2013. As noted above, for tax years 2006 through 2012,
3 Kelley consistently deducted substantial business expenses for Blackstone, and the types
4 and categories of expenses also remained consistent. The consistency in the pattern of
5 business expenses in 2011 and 2012 with the prior years, however, raises questions given
6 the fact that Blackstone's apparent business in 2011 and 2012, in contrast to the earlier
7 years, was limited to drawing down in \$245,000 increments the more than \$2 million in
8 tracking fees collected for services already provided. Therefore, tax information and
9 supporting records relating to Blackstone's earlier tax years may be relevant to highlight
10 the contrast in business activity, and provide support for the illegitimacy of business
11 expenses declared in 2011 and 2012. Likewise, Blackstone's tax information and
12 supporting records for tax year 2013, filed after Kelley was made aware of a criminal tax
13 investigation, may serve to shed light on how and why the nature of the declared business
14 expenses for that year, in contrast to the prior years, changed dramatically even though
15 Blackstone drew down the same income as before. Again, the contrast in types and
16 amounts of claimed business expenses between tax year 2013 and the prior years may be
17 relevant to show the illegitimacy of the prior years' claimed business expenses.

18 75. As set forth more fully in Attachment B, this Affidavit also seeks authority
19 to search for and seize tax information and supporting records related to entities from
20 which Blackstone receives flow through income as a result of an ownership interest,
21 specifically, United National, LLC and Berkeley United, LLC. As detailed above, the
22 profits and losses from the operation of United National and Berkeley United ultimately
23 flow through and become part of Blackstone's tax returns. Information related to those
24 entities are relevant because a complete and correct understanding of Blackstone's
25 returns and the information presented in those returns require an understanding of how
26 the profits and losses, including business expenses, for those separate entities were
27 calculated and accounted for.

1 76. Finally, this affidavit also seeks authority to search for and seize computers
2 and other electronic storage media, further defined below, for electronically maintained
3 tax return information and supporting records pertaining to Blackstone for tax years 2006
4 through 2013. I believe that computers and electronic storage media are relevant because
5 with each of Blackstone's tax returns, Kelley appended what appears to be computer-
6 generated workpapers, schedules, or spreadsheets that summarized the business expenses
7 claimed in each of Blackstone's returns. In addition, the Blackstone tax returns
8 themselves appeared to have been generated electronically via a computer since the
9 information on the forms are typed and not handwritten. There is probable cause to
10 believe, therefore, that computers and electronic storage media in Kelley's residence may
11 contain electronic accounting software and electronic files with tax return information,
12 schedules, spreadsheets, or accounting ledgers from which Kelley generated the returns
13 and the schedules appended to the returns. The protocol to be followed for identifying,
14 seizing and searching the relevant computer and electronic storage media is set forth
15 separately below.

16 **VII. PROBABLE CAUSE TO BELIEVE THE ITEMS**
17 **SOUGHT MAY BE FOUND AT KELLEY'S RESIDENCE**

18 77. I know that Kelley resides at 2521 Fremont Street in Tacoma, Washington.
19 Kelley has used that address as his address on his personal tax returns every year since at
20 least 2006. In addition, he provided that address to IRS Special Agents as his address
21 when he was interviewed by them on April 19, 2013. A search of Washington State
22 Department of Licensing revealed that Kelley's current driver's license lists the Fremont
23 street address as his residence.

24 78. In addition, to the extent that it actually operates, Blackstone appears to
25 operate out of 2521 Fremont Street and records pertaining to the entity are likely to be
26 found there. There is no evidence that Kelley maintains a separate business office for
27 Blackstone. For example, from 2006 through 2013, Blackstone has never deducted
28 expenses associated with rent or a lease for property. In every filing or record that I have

1 been able to review that was associated with Blackstone, Kelley has listed the Fremont
2 Street address. In every full F-1 Report filed with the Public Disclosure Commission,
3 Kelley listed Blackstone's address as 2521 Fremont Street. Blackstone's corporate
4 registration information with the Nevada Secretary of State notes Kelley as the only
5 officer and director and lists the 2521 Fremont Street address as his address of contact.
6 The address of record for the Blackstone Columbia Bank account *8470 is the 2521
7 Fremont Street address. Therefore, I have reason to believe that business records
8 associated with Blackstone will be maintained at 2521 Fremont Street in Tacoma,
9 Washington.

10 79. In particular, I believe that Blackstone's tax records will be located at 2521
11 Fremont Street. Blackstone has listed that address on each of its tax returns from at least
12 2006 through 2013. In addition, that address was the return address listed on the
13 envelopes in which Kelley mailed Blackstone's tax returns to the IRS for each of the
14 years 2006 through 2013.

15 80. I also know from this investigation that Kelley has maintained either
16 personal or business tax returns relating to his businesses at his residence at 2521
17 Fremont Street. During the 2008-10 litigation, Troy Kelley's attorney sent a letter to
18 opposing counsel stating that Kelley had certain tax returns at his home office. During a
19 2010 deposition, Kelley was asked whether that was true, and stated that it was true.

20 81. I also know that taxpayers are required to maintain tax records for at least
21 three years. In addition, I know from my training and experience that individuals often
22 maintain important financial records such as tax records and associated accounting
23 records for even longer. In this case, I seek authority to search for and seize all tax
24 returns, return information, receipts and other accounting records pertaining to
25 Blackstone that support the calculation of Blackstone's income and business expenses for
26 the tax years 2006 through 2013. As explained above, Blackstone was a significant
27 source of income for Kelley for many years. Given the magnitude and the significance of
28 the income provided by Blackstone, I believe there is probable cause to believe Kelley

1 maintains records relating to at least the latter (as he is required to do), and, likely, all of,
2 these years at his home.

3 **VIII. PROTOCOL FOR SEARCH OF**
4 **RESIDENCE WITH FILTER TEAM**

5 82. I am aware that Kelley is currently represented by counsel in connection
6 with this criminal investigation. As a result, there may be attorney-client privileged
7 material among the records sought by this application for a warrant. In order to prevent
8 inadvertent exposure to such material by those involved in this investigation, the search
9 of Kelley's home and the initial seizure of the authorized records, computer and digital
10 devices will be wholly conducted by IRS Special Agents from the Criminal Division
11 who, after the search and seizure, will have no further role in the investigation of this
12 matter, other than to establish chain of custody and, if needed, to provide information
13 and/or testimony regarding the conduct of this search and seizure. The search and seizure
14 team will be advised as to the identities of all relevant counsel and will be instructed to
15 avoid review of any material that may constitute attorney-client communication or
16 attorney work product, never communicate to members of the investigative team the
17 contents of such suspected privileged material, and seize only material authorized by this
18 warrant.

19 **IX. SEARCH AND SEIZURE OF**
20 **COMPUTERS AND FORENSIC ANALYSIS**

21 **A. Definition of Terms.**

22 83. Based on my training and experience and the training and experience of
23 other agents who are involved in and work with the forensic analysis of electronic
24 devices, I use the following terms to convey the following meanings:

25 a. Computer: The term "computer" includes all types of electronic,
26 magnetic, optical, electrochemical, or other high speed data processing devices
27 performing logical, arithmetic, or storage functions, including desktop computers,
28 notebook computers, mobile phones, tablets, server computers, and network hardware.

1 b. Electronic storage medium: The term "electronic storage medium"
2 includes any physical object upon which computer data can be recorded. Examples
3 include hard disks, RAM, floppy disks, flash memory, CD-ROMs, and other magnetic or
4 optical media.

5 84. I will refer to computers and electronic storage media collectively as
6 "computers" throughout this Affidavit.

7 **B. Prior Efforts to Obtain Evidence**

8 85. No prior search warrant has been obtained for the residence and computers
9 of Troy Kelley. On about April 19, 2013, Kelley, as the representative of the entities,
10 was served subpoenas for United National, Blackstone, Berkeley United, and Wellington
11 Trust, among others, for corporate records, accounting records, and bank records for
12 years 2005 through 2013. Counsel for Kelley subsequently expressed objections to the
13 subpoena, and the subpoenas were withdrawn in deference to potential privilege and self-
14 incrimination issues. As a result, no records were obtained pursuant to the subpoena.
15 The warrant I apply for today would allow for the seizure of some but not all of the
16 information called for by those prior subpoenas.

17 **C. Probable Cause That Electronic Records Exist on Computers at Residence.**

18 86. As described in Attachment B, this application seeks permission to seize
19 computers in order to facilitate a later authorized search of the relevant computers for
20 electronically stored records pursuant to Fed. R. Crim. P. 41(e)(2)(B). In addition to the
21 probable cause set forth above, there is probable cause that the records sought will be
22 stored on the computers for the following reasons:

23 a. Based on my knowledge, training, and experience and the
24 knowledge, training and experience of those within IRS who specialize in computer
25 forensics, I know that computer files or remnants of such files can be recovered months
26 or even years after they have been downloaded onto a device, deleted, or viewed via the
27 Internet. Electronic files downloaded to a device can be stored for years at little or no
28 cost. Even when files have been deleted, they can be recovered months or years later

1 using forensic tools. This is so because when a person "deletes" a file on a device, the
2 data contained in the file does not actually disappear; rather, that data remains on the
3 device until it is overwritten by new data.

4 b. Therefore, deleted files, or remnants of deleted files, may reside in
5 free space or slack space-that is, in space on the device that is not currently being used by
6 an active file-for long periods of time before they are overwritten. In addition, a
7 computer's operating system may also keep a record of deleted data in a "swap" or
8 "recovery" file.

9 c. Wholly apart from user-generated files, computer storage media-in
10 particular, computers' internal hard drives-contain electronic evidence of how a computer
11 has been used, what it has been used for, and who has used it. To give a few examples,
12 this forensic evidence can take the form of operating system configurations, artifacts
13 from operating system or application operation, file system data structures, and virtual
14 memory "swap" or paging files. Computer users typically do not erase or delete this
15 evidence, because special software is typically required for that task. However, it is
16 technically possible to delete this information.

17 d. Similarly, files that have been viewed via the Internet are sometimes
18 automatically downloaded into a temporary Internet directory or "cache."

19 **D. Necessity of Imaging or Seizing the Entire Computer.**

20 87. In most cases, a thorough search of a premises for information that might
21 be stored on a device often requires the seizure of the physical computers and later off-
22 site review consistent with the warrant. In lieu of removing the computers from the
23 premises, it is sometimes possible to make an image copy of the computers. Generally
24 speaking, imaging is the taking of a complete electronic picture of the device's data,
25 including all hidden sectors and deleted files. Either seizure or imaging is often
26 necessary to ensure the accuracy and completeness of data recorded on the device, and to
27 prevent the loss of the data either from accidental or intentional destruction. This is true
28 because of the following:

1 a. *The time required for an examination.* As noted above, not all
2 evidence takes the form of documents and files that can be easily viewed on site.
3 Analyzing evidence of how a device has been used, what it has been used for, and who
4 has used it requires considerable time, and taking that much time on premises could be
5 unreasonable. As explained above, because the warrant calls for forensic electronic
6 evidence, it is exceedingly likely that it will be necessary to thoroughly examine a device
7 to obtain evidence. Computers and electronic storage media can store a large volume of
8 information. Reviewing that information for things described in the warrant can take
9 weeks or months, depending on the volume of data stored, and would be impractical and
10 invasive to attempt on-site.

11 b. *Technical requirements.* Computers and electronic storage media
12 can be configured in several different ways, featuring a variety of different operating
13 systems, application software, and configurations. Therefore, searching them sometimes
14 requires tools or knowledge that might not be present on the search site. The vast array
15 of computer hardware and software available makes it difficult to know before a search
16 what tools or knowledge will be required to analyze the system and its data on the
17 Premises. However, taking the device off-site and reviewing it in a controlled
18 environment will allow its examination with the proper tools and knowledge.

19 c. *Variety of forms of electronic media.* Records sought under this
20 warrant could be stored in a variety of storage media formats that may require off-site
21 reviewing with specialized forensic tools.

22 **E. Search and Seizure Protocols.**

23 88. In accordance with the information in this Affidavit, law enforcement
24 personnel will execute the search for and seizure of computers pursuant to this warrant as
25 follows:

26 a. I have reason to believe that Kelley lives at the subject residence
27 with his spouse and two minor children. It is possible that the subject residence will
28 contain computers that are predominantly used, and perhaps owned, by persons who are

1 not suspected of a crime. If the team conducting the search find multiple computers in
2 the residence, they will attempt to corroborate, on site, which resident(s) have access to
3 each computer. The search team conducting the search will only seize computers for
4 which there is probable cause that the things described in Attachment B to this warrant
5 will be found. As to those computers for which the search team has probable cause to
6 believe will contain the things described in Attachment B and are seized in accord with
7 the Affidavit, this application further seeks authority to conduct a preliminary review of
8 the contents of such computers to determine the user. Law enforcement will then seek a
9 supplemental search warrant if agents believe there is probable cause to support further
10 search of any of those computers and no further search of any computer will be
11 conducted until authorized by a separate warrant. Those computers that are determined
12 not to be used by Kelley will be immediately returned and no further search of the
13 computer will be made.

14 b. I also recognize that the seizure of computers may be disruptive to
15 Kelley and others in his residence. As with any search warrant, I expect that this warrant
16 will be executed reasonably. Reasonable execution will likely involve conducting an
17 investigation on the scene of what computers are relevant to this investigation. Where
18 appropriate, officers will make every effort to copy data on-site, rather than physically
19 seize computers to reduce the extent of the disruption. Upon securing the search site, the
20 search team will conduct an initial review of any relevant computers to determine
21 whether the data contained therein can be duplicated on site in a reasonable amount of
22 time and without jeopardizing the ability to accurately preserve the data.

23 c. If, based on their training and experience, and the resources
24 available to them at the search site, the search team determines it is not practical to make
25 an on-site copy of the data within a reasonable amount of time and without jeopardizing
26 the ability to accurately preserve the data, then the computers will be seized and
27 transported to an appropriate law enforcement laboratory for review and to be
28 forensically copied ("imaged"), as appropriate.

1 d. In order to examine the seized computers in a forensically sound
2 manner, law enforcement personnel with appropriate expertise will produce a complete
3 forensic image, if possible and appropriate, of any computers that may contain data or
4 items that fall within the scope of Attachment B of this Affidavit.

5 89. In order to search for data that falls within the list of items to be seized
6 pursuant to Attachment B to this Affidavit, law enforcement personnel will further search
7 for and seize the following items, subject to the procedures set forth above:

8 a. Any documentation, operating logs and reference manuals regarding
9 the operation of the digital device, or software;

10 b. Any application, utility programs, compilers, interpreters, and other
11 software used to facilitate direct or indirect communication with the device hardware, or
12 computer to be searched;

13 c. Any physical keys, encryption devices, dongles and similar physical
14 items that are necessary to gain access to the computers or data; and


15 d. Any passwords, password files, test keys, encryption codes or other
16 information necessary to access the computers or data.

17 **X. REQUEST FOR NONDISCLOSURE AND SEALING.**

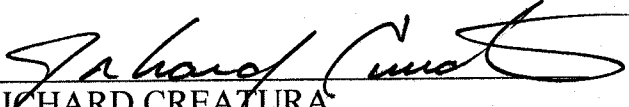
18 90. It is respectfully requested that this Court issue an order sealing, until
19 further order of the Court, all papers submitted in support of this application, including
20 the application and search warrants. I believe that sealing these documents is necessary
21 because the items and information to be seized are relevant to an ongoing investigation.
22 Premature disclosure of the contents of this affidavit and related documents may have a
23 significant and negative impact on the continuing investigation and may severely
24 jeopardize its effectiveness.

XI. CONCLUSION

91. For the reasons set forth above, there is probable cause to believe that evidence, fruits and/or instrumentalities of False Tax Filing, in violation of Title 26, United States Code, Section 7206(1), are located at 2521 Fremont Street, Tacoma, Washington 98406, as more fully described in Attachment A to this Affidavit. I therefore request that the court issue a warrant authorizing a search of the Subject Residence for the items more fully described in Attachment B hereto, incorporated herein by reference, and the seizure of any such items found therein.


AARON HOPPER, Affiant
Special Agent,
Internal Revenue Service

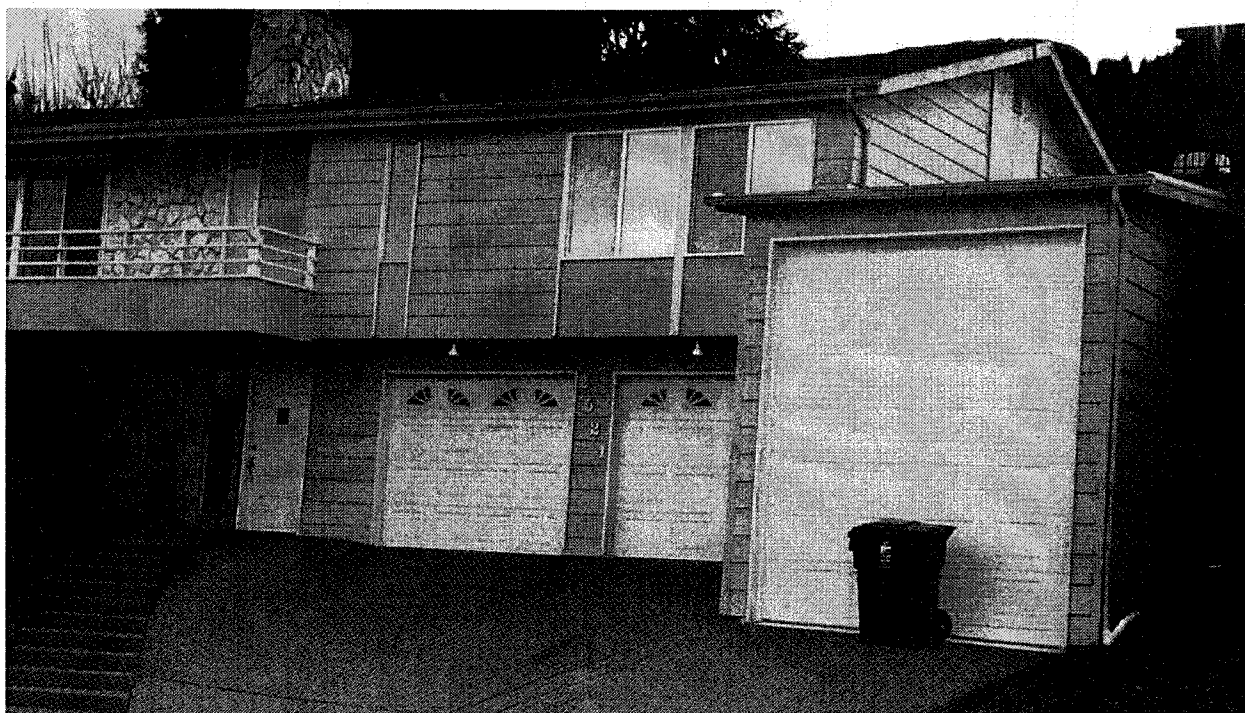
SUBSCRIBED and SWORN to before me this 13th day of March, 2015.


J. RICHARD CREATURA
United States Magistrate Judge

ATTACHMENT A

Premises to be Searched

The subject premises is located at **2521 Fremont St, Tacoma, Washington, 98406**. It is a two story residence with an attached garage. The residence is clearly marked 2521 with diagonal numbers in between garage doors. The residence is a beige color with white garage doors, a white front door, and some white trim. Part of the residence contains rock siding and there is a rock chimney coming out of the roof of the residence. The top level of the residence contains a balcony. There are steps next to the driveway leading up to the front door of the residence. Below is a photograph of the subject residence.



ATTACHMENT B**I. Items to be Seized.**

This warrant authorizes the government to search for and seize the following records, documents, files, or materials, in whatever form, including handmade or mechanical form (such as printed, written, handwritten, or typed documents); photocopies or other photographic form; and electrical, electronic, and magnetic form (such as tapes, cassettes, hard disks, floppy disks, diskettes, compact discs, CD-ROMs, optical discs, zip cartridges, printer buffer, smart cards, electronic notebooks, or any other storage medium), that constitutes evidence, instrumentalities and/or fruits of the commission of False Tax Filing, in violation of Title 26, United States Code, Section 7206(1), which may be found at the subject premises:

1. For tax years 2006 through 2013, all federal tax forms and accompanying schedules, whether filed or unfiled, prepared in the name of Blackstone International, Inc. (EIN 94-3378360);

2. For tax years 2006 through 2013, all federal tax forms and accompanying schedules that support the federal tax returns prepared for Blackstone International, Inc., including forms and schedules relating to any separate corporate or partnership entities whose profit or loss ultimately flows through and appears on Blackstone International, Inc.'s tax returns, including schedules and federal tax forms prepared in the name of Berkeley United, LLC, and United National, LLC;

3. For tax years 2006 through 2013, all bookkeeping records and other financial records (including, sales logs, trial balances, general ledgers, general journals, subsidiary ledgers and journals, disbursement records and/or journals, accounts payable ledgers and records, payroll records, loans receivable and payable ledgers, cash receipts and/or disbursement journals, and work papers) relating to Blackstone International, Inc., Berkeley United, LLC, and United National, LLC, that may have been used to prepare the tax forms and accompanying schedules for such entities, and which may contain evidence of and amounts of business expenditures for such entities;

1 4. For tax years 2006 through 2013, all contracts, agreements, invoices, bills,
2 receipts, loan documents, leases, rental agreements, engagement letters, business
3 proposals, business advertisements, and client lists that evidence business activity for
4 Blackstone International, Inc.;

5 5. Types of digital devices to be seized and searched in accordance with the
6 procedures set forth in the attached Affidavit include "computers" and "electronic storage
7 medium." The term "computer" includes all types of electronic, magnetic, optical,
8 electrochemical, or other high speed data processing devices performing logical,
9 arithmetic, or storage functions, including desktop computers, notebook computers,
10 mobile phones, tablets, server computers, and network hardware. The term "electronic
11 storage medium" includes any physical object upon which computer data can be
12 recorded. Examples include hard disks, RAM, floppy disks, flash memory, CD-ROMs,
13 and other magnetic or optical media.

14 6. For any computer and electronic storage medium (collectively referred to
15 hereinafter as "COMPUTER") whose seizure is authorized by this warrant, this warrant
16 further authorizes the seizure of the following:

17 a. evidence of who used, owned, or controlled the Computer at the time
18 the things described in this warrant were created, edited, or deleted, such as logs, registry
19 entries, configuration files, saved usernames and passwords, documents, browsing
20 history, user profiles, email, email contacts, "chat," instant messaging logs, photographs,
21 and correspondence;

22 b. evidence of software that would allow others to control the
23 Computer, such as viruses, Trojan horses, and other forms of malicious software, as well
24 as evidence of the presence or absence of security software designed to detect malicious
25 software;

26 c. evidence of the lack of such malicious software;

27 d. evidence of the attachment to the Computer of other storage devices
28 or similar containers for electronic evidence;

- e. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the Computer;
- f. evidence of the times the Computer was used;
- g. passwords, encryption keys, and other access devices that may be necessary to access the Computer;
- h. documentation and manuals that may be necessary to access the Computer or to conduct a forensic examination of the Computer;
- i. contextual information necessary to understand the evidence described in this attachment.

II. Search Protocol

Law enforcement personnel will execute the search of computers seized pursuant to this warrant as follows:

a. In executing this warrant, where appropriate, officers will make every effort to copy data on-site, rather than physically seize computers to reduce the extent of the disruption. Upon securing the search site, the search team will conduct an initial review of any relevant computers to determine whether the data contained therein can be searched and/or duplicated on site in a reasonable amount of time and without jeopardizing the ability to accurately preserve the data.

b. If, based on their training and experience, and the resources available to them at the search site, the search team determines it is not practical to make an on-site search, or to make an on-site copy of the data within a reasonable amount of time and without jeopardizing the ability to accurately preserve the data, then the computers will be seized and transported to an appropriate law enforcement laboratory for review and to be forensically copied ("imaged"), as appropriate.

c. It is further possible that the subject residence will contain computers that are predominantly used, and perhaps owned, by persons who are not suspected of a crime. If the team conducting the search find multiple computers in the residence, they will attempt to corroborate, on site, which resident(s) have access to each computer. The

1 search team conducting the search will only seize computers for which there is probable
2 cause that the things described in Attachment B to this warrant will be found. As to those
3 computers for which the search team has probable cause to believe will contain the things
4 described in Attachment B and are seized in accord with this warrant, this application
5 further authorizes the search team to conduct a preliminary review of the contents of such
6 computers to determine the user. Law enforcement will then seek a supplemental search
7 warrant if agents believe there is probable cause to support further search of any of those
8 computers and no further search of any computer will be conducted until authorized by a
9 separate warrant. Those computers that are determined not to be used by Kelley will be
10 immediately returned and no further search of the computer will be made.

11 d. In order to examine the seized computers in a forensically sound
12 manner, law enforcement personnel with appropriate expertise will produce a complete
13 forensic image, if possible and appropriate, of any computers that is found to contain data
14 or items that fall within the scope of Attachment B of this Affidavit. In addition,
15 appropriately trained personnel may search for and attempt to recover deleted, hidden, or
16 encrypted data to determine whether the data fall within the list of items to be seized
17 pursuant to the warrant. In order to search fully for the items identified in the warrant,
18 law enforcement personnel, which may include investigative agents, may then examine
19 all of the data contained in the forensic image/s and/or on the digital devices to view their
20 precise contents and determine whether the data fall within the list of items to be seized
21 pursuant to the warrant.

22 e. The search techniques that will be used will be only those
23 methodologies, techniques and protocols as may reasonably be expected to find, identify,
24 segregate and/or duplicate the items authorized to be seized pursuant to Attachment B to
25 this Affidavit.

26 f. If, after conducting its examination, law enforcement personnel
27 determine that any computer is an instrumentality of the criminal offenses referenced
28 above, the government may retain that device during the pendency of the case as

1 necessary to, among other things, preserve the instrumentality evidence for trial, ensure
2 the chain of custody, and litigate the issue of forfeiture. If law enforcement personnel
3 determine that a computer was not an instrumentality of the criminal offenses referenced
4 above, it shall be returned to the person/entity from whom it was seized within 90 days of
5 the issuance of the warrant, unless the government seeks and obtains authorization from
6 the court for its retention.

7
8 THE SEIZURE OF DIGITAL DEVICES OR OTHER ELECTRONIC STORAGE
9 MEDIA AND/OR THEIR COMPONENTS AS SET FORTH HEREIN IS
10 SPECIFICALLY AUTHORIZED BY THIS SEARCH WARRANT, NOT ONLY TO
11 THE EXTENT THAT SUCH DIGITAL DEVICES OR OTHER ELECTRONIC
12 STORAGE MEDIA CONSTITUTE INSTRUMENTALITIES OF THE CRIMINAL
13 ACTIVITY DESCRIBED ABOVE, BUT ALSO FOR THE PURPOSE OF THE
14 CONDUCTING OF OFF-SITE EXAMINATIONS FOR THEIR CONTENTS FOR
15 EVIDENCE, INSTRUMENTALITIES, OR FRUITS OF THE AFOREMENTIONED
16 CRIMES.
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